UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CENTER FOR CONSTITUTIONAL RIGHTS, TINA M. FOSTER, GITANJALI S. GUTIERREZ, SEEMA AHMAD, MARIA LAHOOD, RACHEL MEEROPOL Plaintiffs, v. GEORGE W. BUSH, President of the United States; NATIONAL SECURITY AGENCY, LTG Keith B. Alexander, Director; DEFENSE INTELLIGENCE AGENCY, LTG Michael D. Maples, Director; CENTRAL INTELLIGENCE AGENCY, Porter J. Goss, Director; DEPARTMENT OF HOMELAND SECURITY, Michael Chertoff, Secretary; FEDERAL BUREAU OF INVESTIGATION, Robert S. Mueller III, Director JOHN D. NEGROPONTE Director of National Intelligence Defendants.	)	Case No. 06-CV-313 Hon. Gerard E. Lynch

DECLARATION OF MAJOR GENERAL RICHARD J. QUIRK, SIGNALS INTELLIGENCE DIRECTOR, NATIONAL SECURITY AGENCY

I, Richard J. Quirk, declare as follows:

INTRODUCTION

1. I am the Signals Intelligence Director of the National Security Agency (NSA), an intelligence agency within the Department of Defense (DoD). The NSA SIGINT Director directs and oversees the signals intelligence (SIGINT) operations of the NSA, which include the SIGINT units of the U.S. armed forces. Under Executive Order (Exec. Order) No. 12333, 46 Fed. Reg. 59941 (1982) and orders of the NSA Director, the NSA SIGINT Director is

responsible for collecting, processing, and disseminating SIGINT information for the foreign intelligence purposes of the United States and for protecting NSA SIGINT activities, sources and methods against their unauthorized, public disclosures. The NSA SIGINT Director has been designated an original TOP SECRET classification authority under Exec. Order No. 12958 as amended.

2. The purpose of this declaration is to support the assertion of a formal claim of the military and state secrets privilege (hereafter "state secrets privilege"), as well as a statutory privilege, by the Director of National Intelligence (DNI) as the head of the intelligence community. In this declaration, I also assert a statutory privilege with respect to information about NSA activities. For the reasons described below, and in my classified declaration provided separately to the court for *in camera* and *ex parte* review, the disclosure of the information covered by these privilege assertions would cause exceptionally grave damage to the national security of the United States. The statements made herein, and in my classified declaration, are based on my personal knowledge of NSA operations and on information made available to me as Director of the NSA.

THE NATIONAL SECURITY AGENCY

3. The NSA was established by Presidential Directive in 1952 as a separately organized agency within the Department of Defense. Under Exec. Order 12333, § 1.12.(b), as amended, NSA's cryptologic mission includes three functions: (1) to collect, process, and disseminate signals intelligence ("SIGINT") information, of which communications intelligence ("COMINT") is a significant subset, for (a) national foreign intelligence purpose, (b) counterintelligence purposes, and (c) the support of military operations; (2) to conduct information security activities; and (3) to conduct operations security training for the U.S.

Government.

4. There are two primary reasons for gathering and analyzing intelligence information. The first, and most important, is to gain information required to direct U.S. resources as necessary to counter external threats. The second reason is to obtain information necessary to the formulation of the United States' foreign policy. Foreign intelligence information provided by NSA is thus relevant to a wide range of important issues, including military order of battle; threat warnings and readiness; arms proliferation; terrorism; and foreign aspects of international narcotics trafficking.

5. In the course of my official duties, I have been advised of this litigation and reviewed the allegations in Plaintiffs' Complaint. As described herein and in my separate classified declaration, information implicated by Plaintiffs' claims is subject to the state secrets privilege assertion in this case by the DNI. The disclosure of this information would cause exceptionally grave damage to the national security of the United States. In addition, it is my judgment that any attempt to proceed in the case will substantially risk disclosure of the privileged information and will cause exceptionally grave damage to the national security of the United States.

6. Through this declaration, I also hereby invoke and assert NSA's statutory privilege to protect information related to NSA activities described below and in more detail in my classified declaration. NSA's statutory privilege is set forth in section 6 of the National Security Agency Act of 1959 (NSA Act), Public Law No. 86-36 (codified as a note to 50 U.S.C. § 402). Section 6 of the NSA Act provides that "[n]othing in this Act or any other law . . . shall be construed to require the disclosure of the organization or any function of the National Security Agency [or] any information with respect to the activities thereof. . . ." By this

language, Congress expressed its determination that disclosure of any information relating to NSA activities is potentially harmful. Section 6 states unequivocally that, notwithstanding *any* other law, NSA cannot be compelled to disclose *any* information with respect to its authorities. Further, NSA is not required to demonstrate specific harm to national security when invoking this statutory privilege, but only to show that the information relates to its activities. Thus, to invoke this privilege, NSA must demonstrate only that the information to be protected falls within the scope of section 6. NSA's functions and activities are therefore protected from disclosure regardless of whether or not the information is classified.

INFORMATION SUBJECT TO CLAIMS OF PRIVILEGE

7. Following the attacks of September 11, 2001, the President of United States authorized the NSA to utilize its SIGINT capabilities to collect certain "one-end foreign" communications where one party is associated with the al Qaeda terrorist organization under the Terrorist Surveillance Program (TSP) for the purpose of detecting and preventing another terrorist attack on the United States. Any further elaboration on the public record concerning the TSP would reveal information that would cause the very harms that the DNI's assertion of the state secrets privilege is intended to prevent. My separate classified declaration provides a more detailed explanation of the information at issue and the harms to national security that would result from its disclosure.

8. Plaintiffs also make allegations regarding whether they have been subject to surveillance by the NSA. Regardless of whether these allegations are accurate or not, the United States can neither confirm nor deny alleged NSA activities or targets. To do otherwise when challenged in litigation would result in the exposure of intelligence information, sources, and methods and would severely undermine surveillance activities in general. For example, if the

United States denied allegations about intelligence targets in cases where such allegations were false, but remained silent in cases where the allegations were accurate, it would tend to reveal that the individuals in the latter cases were targets. Any further elaboration on the public record concerning these matters would reveal information that would cause the very harms that the DNI's assertion of the state secrets privilege is intended to prevent. My separate classified declaration provides a more detailed explanation of the information at issue and the harms to national security that would result from its disclosure.

CONCLUSION

9. In sum, I support the DNI's assertion of the state secrets privilege and statutory privilege to prevent the disclosure of the information detailed in my classified declaration that is available for the Court's *in camera* and *ex parte* review. I also assert a statutory privilege with respect to information about NSA activities. Moreover, because proceedings in this case risk disclosure of privileged and classified intelligence-related information, I respectfully request that the Court not only protect that information from disclosure, but also dismiss this case to stem the harms to the national security of the United States that will occur if it is litigated.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: 26 May 2006

[signature]
MAJ. GEN. RICHARD J. QUIRK
Signals Intelligence Director
National Security Agency